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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,734

09/26/2005

Brian Nielsen

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136 7590 01/23/2009

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EXAMINER

JACKSON, BRANDON LEE

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

01/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,734	<b>Applicant(s)</b> NIELSEN ET AL.	
	<b>Examiner</b> BRANDON JACKSON	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is in response to amendments/arguments filed 10/27/2008. Currently, claims 11-24 are pending in the instant application.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/27/2008 has been entered.

#### ***Response to Arguments***

Applicant's arguments filed 10/27/2008 have been fully considered but they are not persuasive. Applicant argues the liquid-permeable fibrous layer cannot be construed as a non-absorbent reinforcing layer. However, the layer is liquid-permeable, which makes it non-absorbent. In addition, a reinforcing layer is merely another layer of material, which would obviously reinforce the other layers by merely being attached; additional layers added to a wound dressing provide more strength to the dressing.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11-14, 16-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bray et al. (UK Patent Application Publication 2,377,177). Bray discloses a wound dressing (pg. 1, lines 1-2) comprising a web of gel forming fibers (pg. 1, lines 4-5) attached to a non-absorbent, reinforcing layer (pg. 3, lines 51-4), wherein the density of the web is in a range of 25-200 grams per square meter, which has a portion that falls within Applicant's range of 5-60 grams per square meter. The gel-forming fibers comprise alginate (pg. 1, lines 6-7). The reinforced layer and the web are attached by needling (pg. 3, lines 6-7) or thermal bonding (pg. 3, lines 9-10). The reinforced layer obviously could be woven, similar to other layers of the dressing (pg. 1, lines 17-19). The dressing comprises an active agent that is an anti-bacterial agent (pg. 1, lines 23-24). The dressing comprises silver calcium alginate or silver calcium alginate (pg. 1, lines 12-14). Bray fails to explicitly state the reinforcing layer density less than 50 g/m<sup>2</sup>, preferably between 20 and 30 g/m<sup>2</sup>. Moreover, Applicant's specification states the density range of the reinforcing layer can be from 5 to 200 g/m<sup>2</sup>; which is a large range. Therefore, the Bray device would function the same as

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Applicant's claimed invention and the optimum density range can be determined via testing of the device. It would be obvious to one of ordinary skill in the art at the time of the invention to have the fabric layer density to be 5 – 60 g/m<sup>2</sup> and the reinforcing layer to have a density range of 20-30 g/m<sup>2</sup>; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Obviously, combined densities in these ranges could add up to 50 g/m<sup>2</sup>.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray et al. (UK Patent Application Publication 2,377,177) in view of Sessions et al. (US Patent 6,346,653). Bray substantially discloses the claimed invention; see rejection to claim 11 above. Bray fails to disclose an adhesive means for attaching the web to the reinforcing layer. However, Sessions discloses a wound dressing (10) comprising an adhesive means (28) for attaching a first layer (30) to a second layer (32). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to substitute Bray bonding means for the adhesive means, as taught by Sessions, because the adhesive is a well known means in the art for securing layers of a wound dressing.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray et al. (UK Patent Application Publication 2,377,177) in view of Nielsen (US Patent 6,998,509). Bray substantially discloses the claimed invention, specifically including an active ingredient within the dressing; see rejections to claims 11 and 17 above. Bray fails to disclose a pain-relieving agent incorporated in the dressing. However, Nielsen teaches a wound care device comprising a pain-relieving agent (col. 9, lines 27-31).

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Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the active ingredient in the dressing of Bray to substitute a pain relieving agent for the active ingredient, as taught by Nielsen, in order to provide the user with the comfort of not feeling the pain from the wound under the dressing. Such a modification would have been obvious on one of ordinary skill in the art at the time of the invention was made to substitute the pain relieving agent for the antibacterial agent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

BLJ

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761